

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matters of

Review of the Commission's Regulations
Governing Attribution of Broadcast Interests

Review of the Commission's Regulations and
Policies Affecting Investment in the
Broadcast Industry

Reexamination of the Commission's Cross-
Interest Policy

TO THE COMMISSION

) MM Docket No. 91-221

) MM Docket No. 94-150

) MM Docket No. 92-51/

) MM Docket No. 87-154

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**REPLY COMMENTS OF THE MINORITY
MEDIA AND TELECOMMUNICATIONS COUNCIL**

The Minority Media and Telecommunications Council ("MMTC")^{1/} respectfully submits these Reply Comments in support of policies which enhance the opportunities of minorities to own communications properties.

MMTC's general views on the FCC's attribution rules are incorporated in its May 17, 1995 Comments in the parallel minority ownership proceeding and in Reply Comments in that proceeding which it is filing this date. To the instant proceeding, MMTC adds these brief observations.

In Adarand Constructors, Inc. v. Peña, 63 U.S.L.W. 4523 (U.S., June 12, 1995), the Supreme Court overruled much of Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990) and essentially compelled the FCC to undertake a substantial research initiative to defend its minority ownership policies. In April, Congress abolished the tax certificate policy, which was responsible for

^{1/} MMTC, founded in 1986, is the association of attorneys, scholars, engineers and economists which assists the civil rights community in communications policy matters. The views stated herein are those of MMTC itself and are not necessarily the views of any particular member of MMTC or its Board.

approximately 2/3 of all minority owned stations. Now Congress is poised to eviscerate the FCC's multiple ownership rules, including the Mickey Leland Rule,^{2/} and possibly much of Section 310(b) as well. These ill-considered proposals will confer on large domestic and foreign companies an even greater competitive headstart against small and minority owned companies.

As Congress and the courts cut back on minority opportunity, and as some licensees, seeing deregulatory blood in the water, push the limits of the current rules,^{3/} it is particularly critical that the FCC neither directly nor indirectly take steps which will even further impede minority access to the media. The steps needed to protect minority opportunity in proceedings not explicitly involving minority ownership are not always self-evident. Consequently, to be certain that minority opportunity is protected, a condition precedent to eighth floor review of all rulemaking proposals, starting with this one, should be a statement on minority impact.^{4/}

The attribution rules can be fine-tuned to enhance minority ownership opportunities.

First, the category of passive investors should be expanded to include SSBICs. Although SSBICs can temporarily exercise control over debtor companies, that power is tightly regulated by the SBA and is seldom exercised. Attribution of SSBIC interests has had the effect of seriously limiting SSBICs' ability to grow and provide substantial funding to minority applicants and licensees.

^{2/} 47 CFR §73.3555(e)(i), (ii) and (iii).

^{3/} See, e.g., Newcity Communications of Massachusetts, Inc., 10 FCC Rcd 4985 (1995).

^{4/} This statement could be made a permanent section of the Commission's Initial Regulatory Flexibility Analysis.

Second, limited liability companies specifically designed to foster minority ownership should be authorized immediately.

MMTC endorses retention of the cross-interest policy in its current form. That policy is essential to prevent attribution abuse which could render the minority ownership incentives valueless.

Finally, MMTC endorses an obvious and low-cost step to protect against attribution abuse. To reduce the likelihood that nonvoting stock or limited partnership interests could behave in practice like voting stock or general partnership interests, the Commission should require licensees and applicants to reduce to writing and file all agreements among stockholders and officers that might affect day to day operating control.^{5/}

Respectfully submitted,



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^{5/} Such a policy might have enabled the Commission to detect the type of attribution abuse described in Trinity Broadcasting of Florida, Inc. (HDO), 8 FCC Rcd 2475 (1993), in which a large nonminority broadcaster induced minorities who it controlled to join in a front company whose only purpose was to enable the large company to evade the national multiple ownership rule.